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4 UNITED STATES DISTRICT COURT  
5 DISTRICT OF NEVADA  
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8 INSURANCE COMPANY OF THE WEST,  
9 Plaintiff,  
10 v.  
11 RPS HOLDINGS, INC., *et al.*,  
12 Defendants.

Case No. 2:19-cv-00178-JCM-NJK

ORDER

13 Presently before the court is plaintiff Insurance Company of the West's ("ICW") motion  
14 for preliminary injunction. (ECF No. 2). Defendants RPS Holdings, Inc.; Randolph Schams;  
15 Christine Schams; and Eldorado Estates Las Vegas, LLC ("Eldorado Estates") (collectively  
16 "defendants") did not file a response and the time to do so has passed.

17 **I. Facts**

18 On April 27, 2007, ICW issued a surety bond in the amount of \$358,138.40 with Clark  
19 Count, Nevada as the obligee and Eldorado Estates as the principal. (ECF No. 2-2). ICW issued  
20 the bond for the off-site improvements of the Eldorado Estates Phase I ("Phase I construction")  
21 project in Clark County, Nevada. *Id.*

22 As partial consideration for the bond, defendants entered into a general indemnity  
23 agreement ("GIA"). (ECF No. 2-1). The GIA provides that the defendants will indemnify ICW  
24 for damages that arise from the surety bond or defendants' failure to perform in accordance with  
25 the GIA. *Id.* The GIA also provides that, if ICW believes it will incur a loss or expense on the  
26 bond, it can demand defendants to deliver cash or collateral. *Id.*

27 Eldorado Estates failed to complete the Phase 1 construction by October 5, 2011, when  
28 its construction permit expired. (ECF No. 2-4). The Clark County Department of Public Works

1 subsequently asserted a bond claim against ICW for Eldorado Estates' failure to perform. (ECF  
2 Nos. 2-4, 2-5). To date, Clark County has not released its claim. (ECF No. 2).

3 On January 30, 2019, ICW initiated this action, asserting a single cause of action for  
4 breach of contract. (ECF No. 1). In its complaint, ICW demanded for defendants to post  
5 collateral pursuant to the GIA. *Id.* Nothing in record indicates that defendants posted collateral  
6 or obtained a release of bond from Clark County.

7 Now, ICW moves for a preliminary injunction, requesting that the court order specific  
8 performance of the GIA. (ECF No. 2). Specifically, ICW request the court to require defendants  
9 to (1) post collateral in the amount of \$358,138.40 and (2) provide documentation pertaining to  
10 the completion of the Phase I construction and the bond release timeline. *Id.*

## 11 **II. Legal Standard**

12 Federal Rule of Civil Procedure 65 provides that the court may issue a preliminary  
13 injunction on notice to the adverse party. Fed. R. Civ. P. 65(a)(1). A preliminary injunction  
14 seeks to preserve the status quo and prevent irreparable harm from occurring before a judgment  
15 is issued. *Textile Unlimited Inc. v. BMH & Co.*, 240 F.3d 781, 786 (9th Cir. 2001).

16 The Supreme Court has stated that courts must consider the following elements in  
17 determining whether to issue a preliminary injunction: (1) likelihood of success on the merits; (2)  
18 likelihood of irreparable injury if preliminary relief is not granted; (3) balance of hardships; and  
19 (4) advancement of the public interest. *Winter v. N.R.D.C.*, 555 U.S. 7, 20 (2008). The test is  
20 conjunctive, meaning the party seeking the injunction must satisfy each element.

21 Additionally, post-*Winter*, the Ninth Circuit has maintained its serious question and  
22 sliding scale tests. *See Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir.  
23 2011). "Under this approach, the elements of the preliminary injunction test are balanced, so that  
24 a stronger showing of one element may offset a weaker showing of another." *Id.*

25 "Serious questions going to the merits and a balance of hardships that tips sharply  
26 towards the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also  
27 shows that there is a likelihood of irreparable injury and that the injunction is in the public  
28 interest." *Id.* at 1135.

### III. Discussion

Litigants seeking a preliminary injunction have a burden to satisfy each of the four elements above. *See Winter*, 555 U.S. at 20. The court will address each element in turn to determine whether ICW's request for a preliminary injunction has merit.

#### *a. Likelihood of success on the merits*

ICW asserts a single cause of action for breach of contract. (ECF No. 1). To prevail on a claim for breach of contract, a plaintiff must demonstrate (1) the existence of a valid contract; (2) that plaintiff performed or was excused from performance; (3) that the defendant breached the contract; and (4) that the plaintiff sustained damages. *Calloway v. City of Reno*, 993 P.2d 1259, 1263 (Nev. 2001); *see also Sierra Dev. Co. v Chartwell Advisory Group, Ltd.*, 223 F. Supp. 3d 1098, 1103 (D. Nev. 2016).

ICW has provided the court with the GIA, which is a written agreement that includes the defendants' signatures. (ECF No. 2-1). Defendants entered into the contract in exchange for the surety bond, which ICW issued in full compliance with the terms of the GIA. *See* (ECF Nos. 2-2, 2-4). When defendants failed to complete the Phase I construction, ICW reasonably believed that it might incur a loss or expense on the bond. Therefore, defendants' refusal to post collateral upon ICW's demand likely constitutes breach of contract.

#### *b. Likelihood of irreparable injury*

Before a preliminary injunction may issue, the seeking party must show that he will suffer an irreparable injury, which is "traditionally defined as harm for which there is no adequate legal remedy." *Arizona Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014). The mere "possibility" of irreparable harm is not enough to justify a preliminary injunction. *Winter*, 555 U.S. at 22.

ICW has identified in its own motion adequate legal remedy for defendants' breach—damages in the amount of \$358,138.40. (ECF No. 2); *see Rent-A-Center v. Canyon Television & Appliance Rental, Inc.*, 944 F.2d 597, 603 (9th Cir. 1991) ("It is true that economic injury alone does not support a finding of irreparable harm, because such injury can be remedied by a damage award"). Therefore, ICW has not shown that it will likely suffer irreparable harm if the court

1 does not grant injunctive relief.

2 *c. Balance of hardships*

3 In evaluating the balance of hardships, courts “identify the harms which a preliminary  
4 injunction might cause to defendants and . . . weigh these against plaintiff’s threatened injury.”  
5 *Caribbean Marine Services Co. v. Baldridge*, 844 F.2d 668, 676 (9th Cir. 1998) (quotation marks  
6 and citation omitted).

7 The court cannot weigh defendants’ specific harms against ICW’s threatened injury  
8 because ICW has not proven that denying injunctive relief would cause irreparable harm. *See*  
9 *Ferguson v. Mahjoory*, No. 2:05-cv-00346-WAS-LRL, 2006 WL 8442044 at \*5 (D. Nev. Mar.  
10 23, 2006). Therefore, the balance of hardships weighs against granting ICW’s motion.

11 *d. Public interest*

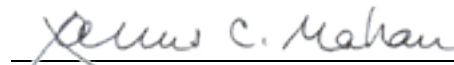
12 “When the reach of an injunction is narrow, limited only to the parties, and has no impact  
13 on non-parties, the public interest will be ‘at most a neutral factor . . .’” *Stormans, Inc v. Selecky*,  
14 586 F.3d 1109, 1138–39 (9th Cir. 2009) (citing *Bernhardt v. L.A. County*, 339 F.3d 920, 931 (9th  
15 Cir. 2003)). Because such is the case here, public interest does not favor issuing a preliminary  
16 injunction.

17 **IV. Conclusion**

18 Accordingly,

19 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that ICW’s motion for  
20 a preliminary injunction (ECF No. 2) be, and the same hereby is, DENIED.

21 DATED THIS 15<sup>th</sup> day of April 2019.

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24 JAMES C. MAHAN  
25 UNITED STATES DISTRICT JUDGE  
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